

RESOLUTION NO. 1265

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, ADOPTING A POLICY FOR POST-ISSUANCE COMPLIANCE AND PROCEDURES FOR BOND ISSUES.

WHEREAS, the Internal Revenue Service (IRS) issued a revised Form 8038-G in September 2011 indicating issuers of tax-exempt bonds should have written post-issuance policies and procedures in place to insure compliance with various requirements of Internal Revenue Code Section 148; and

WHEREAS, such policies must provide for a due diligence review at regular intervals, identification of the responsible individual to perform such review, training of the responsible individual, retention of records related to the bond issuance, procedures for identification of noncompliance in a timely basis, and procedures for taking appropriate steps if noncompliance occurs; and

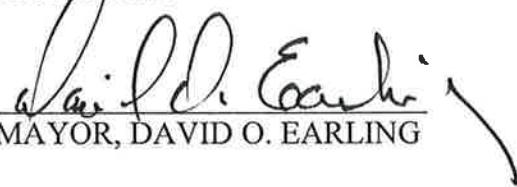
WHEREAS, the City currently has outstanding various tax-exempt, limited-tax general obligation bond issues; now, therefore,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON,
HEREBY RESOLVES AS FOLLOWS:

Section 1. The Post Issuance Compliance and Procedures for Bond Issues policy is hereby adopted to be effective on December 6, 2011 and to continue in full force and effect until amended. A copy of such Post Issuance Compliance and Procedures for Bond Issues policy is attached hereto as Exhibit A and incorporated by this reference as fully as if herein set forth.

RESOLVED this 6th day of December, 2011.

APPROVED:


MAYOR, DAVID O. EARLING

ATTEST/AUTHENTICATED:


CITY CLERK, SANDRA S. CHASE

FILED WITH THE CITY CLERK: 12-02-2011
PASSED BY THE CITY COUNCIL: 12-06-2011
RESOLUTION NO. 1265

Attachment A



CITY OF EDMONDS

Post-Issuance Compliance Policies and Procedures for Bond Issues

Subject: Post Issuance Compliance and
Procedures for Bond Issues

Original Policy Date: N/A

Originating Department: Finance Division

Last Revision Date: N/A

1. Introduction and Purpose.

The purpose of this Policy is to ensure that the City of Edmonds (City) will be in compliance with the following requirements of federal securities laws and federal tax laws that apply when the City issues certain bonds:

2. Federal Securities Law.

- 2.1 Basic Responsibility. In the Bond Ordinance (or other bond documents), the City has agreed to provide ongoing disclosure regarding certain financial information and certain “material events” to the securities markets. This is referred to as “Continuing Disclosure”. The City’s responsibility to provide ongoing continuing disclosure to municipal securities markets is set forth in the bond ordinance or in a separate continuing disclosure agreement for each publicly sold issue of bonds.
- 2.2 “Obligated Person” with respect to PFD Bonds. The City is also an obligated person with respect to certain outstanding bonds issued by the Edmonds Public Facilities District and guaranteed by the City. The Finance Director will review this Continuing Disclosure Agreement and comply with it in connection with its periodic filings relating to the City’s outstanding bonds.
- 2.3 Responsible Official. The Finance Director shall maintain a file that includes a copy of each Continuing Disclosure Undertaking entered into by the City and shall ensure that the information required to be disclosed is disclosed in a timely fashion and that any failure to make disclosure is remedied in a timely fashion.

3. Federal Tax Law.

- 3.1 Basic Responsibility. In the Bond Ordinance (or other bond documents), the City has agreed to ensure that certain provisions of the Internal Revenue Code of 1986, as amended (the “Code”),

will be satisfied, so that interest on the bonds will be and remain tax-exempt (or in some cases, eligible for a federal subsidy or tax credit).

3.2 Basic Rules Summary: (This is a very brief summary. Review the bond transcript and consult with Bond Counsel any time there are questions.)

(a) *Arbitrage Yield Restriction and Rebate Requirements.*

(b) *Arbitrage Yield Restriction and Rebate Requirements.*

- (1) *Eligibility for Small-Issuer Exemption.* The City may have been eligible for the small-issuer exemption from arbitrage rebate compliance for some of its outstanding bonds. For each such bond issue, the City will maintain records sufficient to demonstrate eligibility for this exemption.
- (2) *Construction Fund Spending for Arbitrage Rebate Exception.* The Tax Exemption and Non-Arbitrage Certificate for each bond issue details the specific spending schedule that the City expected at the time of issuance to meet for each bond issue, and this document should be retained in the bond transcript. For each bond issue, that document should be referred to by the Finance Director and project manager(s) in determining compliance with expenditure timelines. If it appears that the City is not meeting the spending exception described in that document, bond counsel should be consulted about what other exceptions may be available.
- (3) *Refunding or Defeasance Escrows.* For any refundings or defeasances, the City shall retain information and records showing that investments held in yield-restricted advance refunding or defeasance escrows for bonds, and investments made with unspent bond proceeds after the expiration of the applicable temporary period, were not invested in investments with a yield higher than the yield on the bonds.
- (4) *Arbitrage Rebate Calculations.* On or before every fifth anniversary of each bond issue that is subject to arbitrage rebate, the Finance Director shall calculate (or engage a consultant to calculate) the rebate amount (if any) due to the United States of America, and shall ensure that a Form 8038-T (including any required payment to the IRS) is timely filed and paid. (No filing need be made if no rebate is owed.) Bond counsel can provide referrals to arbitrage consultants if such assistance is needed.

(c) *Restrictions on Private Business Use and Private Loans.*

- (1) *Private Business Use Test.* No more than 10% of the proceeds of any tax-exempt bond issue (including the property financed with the bonds) may be used for private business use, of which no more than 5% of the proceeds of the tax-exempt bond issue (including the property financed with the bonds) may be used for any “unrelated” private business use—that is, generally, a private business use that is not functionally related to the governmental purposes of the bonds.
 - “Private business use” means use by any person other than a state or local government unit. This includes use by business corporations, partnerships, limited liability companies, associations, nonprofit corporations, natural persons engaged in trade or business activity, the United States of America and any federal agency, as a result of ownership of the property or use of the property under a lease, management or service contract, output contract for the purchase of electricity or water, privately (or federally) sponsored research contract,

“naming rights” contract, “public-private partnership” arrangement, or any similar use arrangement that provides special legal entitlements for the use of the bond-financed property.

- “Functionally related” means used for the same function. For example, in a city office building, rental of surplus space for use as offices is related to the “office” function of the building, but rental of surplus space for a retail store is not.

(2) *Private Loan Financing Test.* No more than *the lesser* of \$5,000,000 or 5% of the proceeds of a tax-exempt bond issue may be used to make or finance a loan to any person other than a state or local government unit.

3.3 Compliance Procedures.

(a) *Ongoing Education Policy.* The Finance Director shall arrange for education and ongoing training at least once every 3 years for him- or herself, for designated members of his or her staff, and for the heads of departments and key operational personnel who are responsible for managing or overseeing any bond-financed facilities, land or equipment. This may include attendance at appropriate training programs offered by, among others, the City’s bond counsel, the Washington Municipal Treasurers Association (WMTA), the Washington Finance Officers Association (WFOA) and similar organizations.

(b) *Regular Periodic Monitoring; Annual Review of Use.* Although the City Council of the City retains final responsibility for monitoring post-issuance compliance with federal tax requirements for the City’s tax-advantaged bonds, the City Council assigns to the Finance Director of the City the primary operating responsibility for such monitoring. At least one time per year, typically immediately prior to an annual principal payment date, the Finance Director shall review the use of bond-financed property and check for compliance with the applicable federal tax requirements and shall immediately consult with bond counsel if instances of noncompliance are discovered.

(c) *Special Use Arrangements for Bond-Financed Property.* Before the City (or any agency or department) enters into a special use arrangement with a nongovernmental person that involves bond-financed property, the City (or agency or department) must consult with the Finance Director, provide the Finance Director with a description of the proposed nongovernmental use arrangement, and determine whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property.

(d) *Finance Director to Consult with Bond Counsel.* When evaluating any such proposal, the Finance Director should consult with bond counsel as necessary regarding whether that use arrangement, if put into effect, will be consistent with restrictions on private business use of the bond-financed property.

3.4 Special Compliance Policies and Procedures for Tax-Advantaged Bonds. Prior to issuance of any tax-advantaged bonds not described in this policy (e.g., tax subsidy bonds or tax credit bonds), the Finance Director must consult with bond counsel regarding any special post-issuance compliance policies or procedures that need to be adopted.

4. Record Retention.

- 4.1 Retention Policy. Written records with respect to each City bond issue (which may be in electronic form) will be maintained for as long as those bonds remain outstanding, plus three years. In the case of refunding bonds, the written records relating to the original (refunded) bonds will be kept, along with those of the refunding bonds, until the refunding bonds are no longer outstanding, plus three years.
- 4.2 Records to be Retained. The City will maintain the following records:
- (a) *Transcript.* The official Transcript of Proceedings for the original issuance of the bonds.
 - (b) *Investment of Bond Proceeds.* Records showing how the bond proceeds were invested, including records of all purchases and sales of investments made with bond proceeds and records of earnings receipts on those investments.
 - (c) *Expenditures of Bond Proceeds.* Records of all expenditures of bond proceeds (including investment earnings). This should include copies (which may be electronic) of all relevant documentation, including property purchase and construction contracts, progress payment requests, invoices, cancelled checks, payment of bond issuance costs, and records of “allocations” of bond proceeds to make reimbursement for project expenditures made before the bonds were actually issued.
 - (d) *Records of Use of Bond Financed Facilities.* Records of all special use arrangements with nongovernmental persons, if any, affecting bond-financed property. These records should include copies of the pertinent leases, contracts or other documentation, and the related determination that those nongovernmental uses are not inconsistent with the tax-exempt status of the bonds that financed the property.
 - (e) *Arbitrage Rebate Exemptions.* Information, records and calculations relating to the Arbitrage Exemption(s) for which each bond issue qualified.

Adoption by City Council: Resolution No. 1265 Adopted on: 12-06-2011